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AGC Assists Members in Workplace Safety

This month’s “California Constructor” highlights safety in the construction industry. Working on behalf of its members’ best interests, AGC has remained at the forefront of legislative, legal and regulatory issues in regards to safety.

On the legal front, AGC most recently took a position to file an amicus brief on behalf of Harris Construction in *Harris Construction vs. Department of Occupational Safety & Health* (DOSH) relating to the “controlling employer” issue. This case would have given Cal/OSHA authority to cite general contractors for project site violations, and it would have severely hobbled the general contractor’s ability to defend against such citations. Unlike the 2007 *Overaa Construction* case, which upheld that the burden of proof for proving “due diligence” on the part of a controlling employer was up to the employer, the *Harris* decision put the burden of proof on Cal/OSHA/DOSH to show that the controlling employer was in a position to abate or prevent specific hazards on multi-employer worksites. The appeals board decision was overturned earlier this year, and the Sacramento Superior Court has asked the appellate court to reconsider its previous decision. AGC continues to monitor the final outcome of the appeals board decision.

AGC’s Safety & Health program provides direct services in the area of safety, health, regulatory advocacy and related education. Education is one of the cornerstone services offered using our own member firms to provide information and training from individuals who have field experience and serve on our AGC Safety & Health Council. The Council consists of more than 120 of the most influential safety professionals throughout the California construction industry. On the regulatory front our close working relationship with Cal/OSHA allows us to engage in preemptive dialogue and provide input concerning changes to safety regulations, while enabling us to provide our members with cutting edge information as it relates to our industry.

Through our discount program partnerships, AGC offers members a variety of safety training courses both in person and online. A complete list of courses can be found in our Education & Training Catalog or through our website at www.agc-ca.org. AGC also offers several safety related products such as a Heat Illness Prevention Compliance Program and the Cal/OSHA Construction Pocket Guide, among others.

In addition to these resources, the Safety Video Lending Library is available to members, free of charge, and contains over 125 titles on a wide variety of safety topics, from workplace violence prevention and fall protection to excavation and office safety, among other topics. Members can now view videos in the Safety Training Room at the newly remodeled AGC headquarters in West Sacramento.

To learn more about the safety services we provide or to join the AGC Safety & Health Council, please visit our Safety & Health Resources page on the AGC website or contact Kate Smiley at (916) 371-2422 or smileyk@agc-ca.org.

Finally, on behalf of the AGC membership, I would like to say thank you to the Safety & Health Council for their continuing support and efforts in representing the construction industry.

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The U.S. Environmental Protection Agency (EPA) has awarded CalPortland Company the National ENERGY STAR® Award for Sustained Excellence in recognition of its continued leadership in protecting our environment through energy efficiency. CalPortland’s accomplishment over six consecutive years is a feat that has never been matched by any other U.S. building materials company.
Surprise – Another Budget Crisis

By Dave Ackerman

**Last year, California implemented a series of tax increases that were designed to remedy the state’s budget problems. These consisted of hikes on the sales tax, vehicle license fee, and income taxes. Despite these tax changes, the state is looking at another $20 billion-plus deficit for the upcoming year due to continued spending and unrealistic revenue assumptions.**

The General Fund, which provides the lion’s share of state spending, derives 98 percent of its revenues from various tax collections. These include taxes on income, sales of goods, corporations, motor vehicles, alcohol, and tobacco, etc. By far, the largest single source of revenue into the General Fund is the Personal Income Tax, which makes up 52.5 percent, or $47 billion, of all General Fund revenues for fiscal year 2010-11. The remainder comes primarily from taxes on the sale and use of goods and property, expected to be approximately $26 billion (28.9 percent), and income taxes on corporations of about $10 billion (11.3 percent). In total, more than half of the state’s General Fund spending comes from income taxes, with about one-third from sales taxes, and the remainder from taxes on corporations.

According to the budget plan proposed by the Governor for 2010-11, approximately 43 percent of General Fund Revenues will be spent on kindergarten through high school education programs; 25 percent on health and welfare programs; 14 percent on colleges; and 10 percent on prisons. The remaining 11 percent is spent for other purposes, such as the Legislature and general government activities.

**April Tax Collections Take a Nosedive**

Due in part to lower-than-expected April tax collections, California now faces a budget shortfall in excess of $20 billion. This shortfall is an estimate of how much the state would be in the hole at the end of the next fiscal year – June 30, 2011 – if no corrective action is taken to bring spending in line with revenues.

To the good, the Legislature already reduced spending by $1.3 billion during a special fiscal emergency session called earlier in the year by Governor Schwarzenegger. It was during this session that the legislature enacted the “gas tax swap” that will net nearly $1 billion in General Fund savings in 2010-11. By enacting the cuts in the spring, before the beginning of the new fiscal year, several months of additional savings accrued.

Through March of this year, state tax revenues – sales, business and income – were running ahead of estimates by $2.6 billion, causing legislators to take a momentary deep breath and hope that California’s economy would generate additional revenue as it has done in the past. The budget pressure seemed to ease.

The bad news came in April. Revenue for April, the biggest revenue month because it is when most Californians pay their taxes, came in under projections by over $3 billion, wiping out the revenue gains that had been recorded in each of the four previous months.

It is unclear why revenues dipped so sharply in April. Some blame new laws that changed the timing of tax payments. The growth in unemployed residents eligible for refunds could have also changed the projections. To balance last year’s budget, lawmakers tinkered heavily with the state tax code, speeding up the collection of taxes on businesses and individuals. One theory about the April revenue plunge is that those accelerated collections meant some taxes rolled into the Treasury months earlier. Another possibility is that many Californians were owed larger-than-expected income tax refunds after losing their jobs in 2009.

The April collections came almost entirely from personal income taxes. Corporate and sales taxes are reported later and if they, too, come in below projections, the state’s budget problem would continue to grow worse.

Schwarzenegger’s budget in January was also premised on lawmakers enacting a complete budget by March 1. The Governor’s January budget anticipated savings from those four months before the fiscal year begins July 1. With the Legislature not taking action to enact an “early” budget, that “lost” savings now will be added onto the budget gap, making it even larger.

**Huge Cuts Must Be Considered**

As next month’s deadline for passing a budget approaches, Legislators, facing a deficit equal to about 20% of general fund spending, have no easy options left for addressing it. They have already “picked the low hanging fruit”, not once – but twice; cut state services significantly; and temporarily raised income, sales and vehicle taxes.

The drop in revenue projections means the Legislature will have to consider even deeper cuts in government services – schools, healthcare for the poor and services for the elderly – and also consider more reductions in funds for public universities, as well as additional tax hikes. None of these options are popular, or even viable, in an election year.

Some of the bigger ticket budget cuts that are being looked at may be considered either unworkable, fiscally irresponsible or politically infeasible. For example:

- Elimination of the state’s welfare program could save $1 billion but would end an almost $4 billion federal match.
- State employee salaries could be reduced by a second 5 percent – a savings of $508 million.
- Schwarzenegger himself has ruled out additional reductions to the University of California and the California State University system, but additional cuts may have to be made.
- Various tax credits or postponed tax breaks could also be used to make up state revenue, including delaying businesses to apply net operating losses from prior years, saving $1.2 billion in tax expenditures.

There will be great temptation to again do as many “one time” fixes as possible and avoid the politically difficult decisions, hoping that California’s economic engine will once again pull us all out of the fire. Unfortunately for the Legislature, the low hanging fruit was picked a long time ago.
State Board Tackles Variety of Industry Issues at May Meeting

AGC of California held its Spring State Board of Directors meeting on May 13 in Monterey.

President’s Report: President Bob Christenson, Panattoni Construction, recapped the Executive Committee meeting held the day prior. In regulatory efforts, the Committee reviewed a financial support request from the Construction Industry Air Quality Coalition (CIAQC) and Construction Industry Coalition on Water Quality (CICWQ) and authorized up to $25,000 from the Legislative Fund towards their efforts. Additional reports received during the Executive Committee meeting included one on a proliferation on the local hire ordinance issue, as well as status reports of the three amicus briefs approved in January.

Keynote Speaker – Gary Dietrich: Political Analyst Gary Dietrich discussed the latest in California Politics. He noted that 2010 is shaping up to be an epic political year and discussed the three big trends occurring in California politics that included increased citizen involvement and voter interaction, shifting of fiscal tectonic plates – increased bond initiatives, and the elimination of a dominant party due to lack of creditability and trust by the public. He ended with the importance of bringing back hope into the political system.

CEO’s Report: AGC CEO Tom Holsman reported on the association’s strategic plan and scorecard and highlighted areas of excellence, opportunities for growth, and an update on staffing. In terms of legislative and regulatory strengths, he reported that AGC was successful in stopping the gas tax legislation and that it continues to make headway on the CARB regulation.

Special recognition was given to John Hakel, Vice President of Government Relations, as well as a CEO Tom Holsman for their 25 years of service with AGC.

In member announcements, President Bob Christenson inducted Barbalette Newton of Redwood Resources and Kevin Malloy of Trench Shoring Company into the President’s Club.

AGC of America Sr. VP: Directors heard from AGC of America Sr. Vice President Kris Young, Miller the Driller, who highlighted national activities and noted the 2010 theme is “Strength through Unity.” This year AGC of America is focused on strengthening its strategic plan to optimize member’s dues dollar, building on chapter relationships, and growing PAC awareness. National continues to monitor the economic conditions and construction employment, the CARB issue, Employee Free Choice Act (card check), healthcare reform, green construction, and the Highway Transportation Bill.

Local Hire Ordinance: Bruno Dietl, Vulcan Construction & Maintenance, Inc., expressed the concern about the local hire ordinances popping up throughout California that will prove to be very costly to contractors, and he asked for a unified way for AGC to fight these ordinances. State Board Directors authorized the Legal Advisory Committee (LAC) to research the legal ramifications and develop a white paper on this issue.

Legislative Program Report: Chair Steve Blois, Valley Vista Consulting, provided an update on the status of the 2010 Legislative Program and noted that AGC has a total of eight sponsored or co-sponsored bills. Blois then opened the floor for discussion on the AGC sponsored legislation on DBE/DVBE requirements (AB 26, AB 27) and whether AGC should modify its position. He noted that the original intent of the bill was to reinstate the “good faith effort”; however, contractors are expressing that the Caltrans requirement seems to be working without the good faith effort in place. Following a lively discussion, the State Board of Directors voted to amend current sponsored legislation to focus on false fronts used to meet the DBE requirement.

PAC Update: Chair Chuck Fletcher, MCE Corporation, reported that during the PAC meeting held the day prior, the committee voted to increase support for Proposition 14, the Open Primary Act, and contribute for opposition on Proposition 15, which is the California Fair Elections Act.

AGC Education Foundation: Vice Chair Tony Grasso of Griffith Company recapped Construction Careers Awareness Days held in Los Angeles and Fresno that both had strong turnout by local high schools, members and agencies. There are two additional Career Days scheduled in Vallejo and Sacramento. Grasso reported that the Foundation continues to promote construction careers at the high school level while also working with the AGC student chapters. The State Board of Directors approved Cathy Skeen, Excel Bonds & Insurance Services, as a Director on the Education Foundation Board.
AGC Calls for Entries to Safety Awards Competition

AGC of California’s Safety & Health Council has established Friday, August 13 as the application entry deadline for AGC’s 23rd Annual Safety Awards of Excellence competition.

As the most prestigious safety recognition in the California construction industry, the awards showcase AGC member company safety achievements and recognize those who have worked so hard throughout the year to keep their employees safe. The competition is open to all members and covers work done in calendar year 2009. The awards event will be held during AGC of California’s November Fall Conference in Indian Wells.

The Safety Awards of Excellence recognize contractors for their outstanding safety programs in the following categories:
- **Contractor Safety Awards based on worker hours in California:**
  - Under 200,000 worker hours
  - 200,000 – 500,000 worker hours
  - 500,001 – 1 million worker hours
  - Over One million hours
- **Heavy Civil/Highway**
  - Under 200,000 worker hours
  - 200,000 – 500,000 worker hours
  - 500,001 – 1 million worker hours
  - Over One million hours
- **Specialty Contractor**
  - Under 500,000 worker hours
  - 500,001 – 1 million worker hours
  - Over One million hours
- **Safety on a High Hazard project**
- **Unique Safety Application**
- **Individual Safety Effort of a Superintendent or Jobsite Manager**
- **Associate member contribution to the industry**
Special awards will also be presented in these additional categories:
- **Safety Professional of the Year**
- **Professional Development Grant**

Judging will be conducted by a panel of safety professionals and construction managers, which includes the Chair and Vice chair of the AGC Safety & Health Council, representatives from the First place winners of the prior year Safety Awards competition, and a Safety Council member at large.

This is a great opportunity to evaluate your company’s Safety record and be formally recognized for excellent results with one of the prestigious Safety Awards of Excellence.

The award application package is available online at the AGC website www.agc-ca.org or by calling AGC of California at (916) 371-2422. For an electronic document in Microsoft Word, email your request to smileyk@agc-ca.org.

First time applicants are encouraged to contact Kate Smiley for assistance in completing the application.
Swinerton Aims for the Moon with Growing Green Portfolio

NASA’s Sustainability Base, JPL Flight Center Projects Examples of Recent Green Projects Undertaken by Top-Ranked Green Builder

By Carol Eaton

Four decades after the Apollo 11 Lunar Module Eagle made the first moon landing at a site dubbed “Tranquility Base,” Swinerton Builders is in the midst of constructing the “Sustainability Base” building at NASA’s Ames Research Center in Mountain View, Calif. – a structure designed to be the greenest building in the federal government’s portfolio to date. The $20 million project – whose official name honors the famous lunar landing spot where American astronaut Neil Armstrong became the first man to walk on the moon on July 20, 1969 – is representative of Swinerton’s extensive portfolio of green projects in California and nationwide. It follows on the heels of its LEED Gold certified Jet Propulsion Laboratory (JPL) Flights Center Project in Pasadena that was completed last fall and which has received widespread acclaim and recognition.

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Swinerton’s green project portfolio and the ongoing commitment to sustainable building that it shares with an ever growing number of other contractors both large and small propelled Swinerton to the number one spot in the ranking of green builders in California by McGraw-Hill’s California Construction in its May 2010 issue. (The rankings were based on 2009 revenues from green registered projects within California, the number of LEED accredited professionals and other factors.) Swinerton was also ranked #1 in a list of LEED Accredited Professionals on the West Coast by Sustainable Industries magazine (March 2010 issue), reporting some 325 LEED-AP employees – representing more than 25% of its workforce.

To date Swinerton has completed approximately 75 LEED projects totaling over $1.7 billion and covering more than 10.5 million square feet of building. “At Swinerton we believe that green building is simply smart building,” said Jeff Hoopes, President of Swinerton Incorporated. “It is our responsibility to support the implementation of green building and sustainable construction practices on our projects and set the example as good corporate stewards of the environment in the areas we work and live. Green building is a true win-win in that we can cost-effectively provide healthier, more energy-efficient buildings to clients while benefitting the environment.”

Sustainability Base Project

Slated for completion in early 2011, the 50,000-sq.-ft. Sustainability Base project will be a research facility for studying sustainability on earth, and it is designed to achieve LEED-NC v2.2 Platinum Certification. AECOM is the architect of record, while William McDonough & Associates is design architect on the project. The building comprises two separate, two-story wings. Green features of Sustainability Base will include complete heating, ventilating and air conditioning systems using ground source heat pumps; solar hot-water systems; and an advanced lighting system. In addition to the structure, the project also includes site preparation, utilities, installation of 72 geothermal wells, and more. In order to achieve sustainability, the building will have zero net energy consumption and will use 90 percent less potable water than conventionally built buildings.

The project team is employing cutting edge virtual design & construction technology to guide the project design and construction process. Once complete the structure is expected to be the greenest and highest performing building in the federal government’s portfolio.

“Based upon our experiences to date with Sustainability Base construction, I would have to say Swinerton has been a model general contractor,” commented Steve Zornetzer, Associate Center Director of NASA Ames. “They are fully on board with NASA’s intention to build an extremely high performance building that meets and exceeds LEED Platinum Certification and are as invested in the ultimate success of the project as NASA.”
Also ranking among Swinerton’s most notable and innovative green projects to date is the JPL Flights Center project in Pasadena, which was completed last fall and received LEED Gold Certification from the U.S. Green Building Council.

The project received a “Green Building Award” this spring at the fourth annual Green California Leadership Awards in Sacramento.

The six-story Flight Projects Center will house missions in the busy design and development phases, when engineers and scientists from all around the world must work together closely to collaborate and centralize flight projects, project management and direct support functions.

Designed by architect LPA Inc., Irvine, the 193,491 sq.-ft. building comprises conference rooms, war rooms, offices, recycle areas, a gym, multi-purpose room, auditorium, outdoor plaza areas, teaching spaces and more. The adjacent 429-seat state of the art auditorium features high tech audiovisual and acoustic components; it houses a 42-foot wide projection screen for its audience, and features under-seat swirl diffusers while topped off with a vegetative Green Roof System.

Just some of the sustainable aspects of the building include:

- A living roof that will keep the building cool in the summer and warm in the winter, while also helping minimize storm water runoff into a close by dry riverbed.
- Lowered energy needs achieved through improved wall insulation, efficient chillers and boilers, window shading devices and the green roof.
- Outdoor lights that reduce light pollution
- Low flow plumbing that will reduce water use by 40% from a conventional building.
- A “smart” heating and cooling system knows whether people are in a room and adjusts temperature and ventilation accordingly.

To see more on the above projects on YouTube, go to the following video links:

- JPL: http://www.youtube.com/watch?v=R_j3TRAmX_0
- Sustainability Base: http://www.youtube.com/watch?v=QuLdJCyfDZo)
Experience Modification Rate: An Accurate Measurement of Safety Performance?

By Rick Church

It seems an unfortunate fact that a number of good, safety conscious construction companies are being precluded, or seriously handicapped, from bidding winning projects due to the increasingly common practice by agencies, project owners and general contractors of using the Workers’ Compensation Experience Modification Rate (EMR) as a measure of safety performance. EMR is not necessarily a correct indicator of safety performance. EMR is an insurance underwriting tool originally set up to measure an employer’s workers’ compensation claims experience and to adjust pricing accordingly.

Under this system, an employer with a calculated EMR of 1.00 is determined to have “average” loss experience for the governing class of their workers’ compensation policy. If the factor is greater than 1.00, the employer’s claim performance, in terms of frequency and/or severity, is considered worse than average. Conversely, if the calculated EMR is less than 1.00, the employer’s claims performance is considered to be better than the average governing class. EMRs are also trailing indicators. They measure the previous three policy years of claim costs, excluding the most recently expired policy year. Companies may have enacted many positive changes since those dates to help improve safety and claims management systems.

Good (safe) contractors can see their EMR increase for numerous reasons unrelated to safety. These include:

• A new rate formula in California;
• Fewer dollars in the workers’ compensation system;
• Payrolls down due to economy; and
• Workers’ compensation claims that are included in EMR that were unavoidable and may not reflect a “lack of safety”.

Most disturbing and this article’s main theme – workers’ compensation claims are being included in the EMR calculation even though the injury was brought about by factors beyond the control of the employer. As agencies, owners, general contractors and construction managers strive to evaluate contractor safety performance, using the right measurement is more important than ever.

The Issue

According to the California Workers’ Compensation Rating Bureau*, the formula change was predicted to have the following affects on California EMRs: -3 to +3 points 44% of business, +4 to +10 points for 27% of business, +11 to +20 points for 4% of business. Many employers have already seen an increase in EMR due solely to the formula change, even though their own loss experience has not changed.

The workers’ compensation system has undergone considerable change in recent years. As open rating and workers’ compensation reform measures have been enacted, the result has been that around 75% of the premium dollars have been taken out of the system from 2004 to 2009**. Currently, there are $8.9 billion in workers’ compensation insurance premiums written in California, which is down from $23.5 billion in 2004. In 1993 premiums were at today’s volume of $8.9 billion. Employers with similar losses and costs from year to year experienced increases in EMR as there were far fewer dollars available in the system to pay claims. Conversely, some firms had decreases in their workers’ compensation claims and costs and still saw their EMR rise.

The original intent of the workers’ compensation system was to protect the employer from lawsuits brought by injured employees to provide injured employees the resources necessary to recover from their injury as much as possible. Many employers have had claims filed by employees who embellish the seriousness of an event, making it worse than it really is, or even going to the extent of filing a fraudulent workers’ compensation claim. Even if the insurance carrier denies these claims, because there was a claim filed, there may be some medical and/or legal or investigative costs associated with the denial.

Another problem faced by contractors that can result in EMR increases is major losses caused by third parties that are no fault of the employer. Many instances exist demonstrating that filing workers’ compensation insurance claims have nothing to do with the company’s safety efforts.

Workers Comp Claims Don’t Always Reflect Safety Efforts

The examples below highlight the issues:

■ An employee is seriously injured while traveling on company-related business from one project to another in a company owned pick up truck. He is rear ended by an uninsured driver. Because there is no subrogation potential, the employer is liable for the workers’ compensation bills totaling many thousands of dollars. This situation adds points to the EMR putting the company over 1.00 and making the company ineligible or subject to additional scrutiny during the pre qualification process.

■ Two employees are involved in a fist fight in which one breaks the other’s jaw. The result is a permanent damage award and this claim drives up the EMR exponentially.

■ A high profile truck hits a K rail, flips over and the vehicle crashes a worker inside the K rail. The employer has an extensive safety program, exceeds MUTCD requirements and has documented training. This claim pushed the firm’s EMR to over 1.00.

■ Cumulative Trauma (CT) claims. If you are the unlucky last employer in a long string of employers for someone claiming CT you could be stuck with the work comp costs. It is unlikely that the entire CT occurred during the one year working for you and was probably spread out over the previous 20 years while working.
for other contractors. Although in some cases apportionment may be an option there will still be significant costs associated with the claim.

Many claims filed by workers are due to soft tissue (back, arm, knee, shoulder, etc…) strains as construction projects are coming to an end and no further work is available. These claims are very difficult to prove or disprove and such a phenomenon may not accurately reflect the management of the company’s safety program.

Additionally, many times construction companies are at the mercy of the insurance carrier claim representatives to handle claims effectively. If not, the claim dollars may increase and due to no fault of the construction firm the EMR may increase. A firm’s EMR may be higher with the same claims as other contractors simply because one insurance carrier handles claims better than another.

As previously mentioned, Experience Modification Rates (EMRs) are an insurance tool to help underwriters set premiums. Not every contractor that has an EMR of over 1.00 is a ‘bad’ employer and for that matter, those companies under 1.00 are not necessarily good (safe) employers. The State of California recognized this fact when the state enacted its High Hazard Unit. The state defines “High Hazard Employers” as those having an EMR of 1.25 or greater, thus giving a leeway of 24 points to make up the inadequacies or inequities of the EMR grading system. The Army Corps of Engineers has recently raised their cut off level to 1.05. They raised it 5 points due to the many contractors now bidding work who have EMRs greater than 1.00.

Finally, it should be noted that relatively small/medium firms can see their EMR spike upward during the rating period as a result of one or two large claims (legitimate or not). There is no statistical “power” in the EMR measurement as applied to smaller/medium firms.

Recommendations

Perhaps a better way to measure a company’s safety performance is to look at the Incident Rate (IR), Days Away, Restricted and Transfer Case Rates (used to measure effectiveness of return to work programs) over the past three to five years. Other pre-qualifiers include safety program reviews and OSHA citation histories.

If EMRs are going to be used during the pre qualification process, they should be used with the understanding that some extenuating circumstances may be in play and ask for an explanation letter of why the EMR is over 1.00 and if applicable what is being done to help lower it. Possibly, a third party professional, such as a Board Certified Safety Professional (CSP), insurance broker, or an insurance carrier could issue the explanation letter. The State of California requires firms who wish to self insure have their safety program and OSHA records “certified” by a CSP. A similar “certification” regarding a contractor’s EMR could be accepted by project owners. Perhaps averaging the EMR over a three year period or trending the EMR could also be used.

Some will argue that the EMR formula is the same for everyone so it must be fair. The problem with that viewpoint is that some companies have been the victims of uncontrollable events, even fraud, while others have not. *The WCIRB states: “The fact that one employer has a higher experience modification than another employer within the same classification does not necessarily imply that the first employer is less safe.”

In today’s tough economy, there is a lot of competition for every project. A more equitable solution for those agencies, owners and GC’s who want to utilize safe contractors is to allow an explanation of why the EMR is over 1.00 and, if applicable, what is being done to try to lower it. *

Rick Church is Director, Risk Control Services, Aon Construction Services Group, the world’s largest construction and insurance broker. He has been an active member of AGC of California Safety Committee since 1995 and was awarded AGC of California Safety Professional of the Year (Associate Member) in 2000.

AGC Members Benefit From Host of Safety Services

Through its network of experienced safety and health professionals, quality safety and health products and training programs, and highly effective representation on legislative and regulatory issues impacting construction health and safety, AGC of California delivers a high level of service in the safety, health and environmental arena to member firms in the construction industry.

AGC of California holds a variety of training programs throughout the year, with seminars focusing on Heat Illness Prevention, Fall Protection, Excavation, and OSHA 10 hour construction among other topics. The association actively promotes safety recognition through programs that include the annual Safety Awards of Excellence competition and the promotion of the Cal/OSHA safety recognition program.

The Safety & Health Council also develops and delivers a variety of products and resources for members, including:

• Safety Snaps and Alerts: Timely information on regulatory and legislative changes, industry trends that can affect the safety in the construction industry.

• Consultation: Consultation on safety and health related matters in the construction industry. Review of IIPP available for members. Liaison between Cal/OSHA and the contractor.

• Safety Training: Teaching, coordinating and recommending required and desired safety topics.

• Video Lending Library: Free for members, this library contains hundreds of videos and DVD’s on various safety and health topics for the construction industry available for FREE to AGC members.

• IIPP: A basic Injury and Illness Prevention Program available for a contractor to start its program with. Take and modify to fit your company’s needs without having to re-create the wheel.

• Heat Illness Prevention program: CD containing a ready-to-go program in English and Spanish to help contractors meet the Heat Illness Prevention regulation.

AGC of California leads the industry in promoting construction safety at the local, state and national level. For more information, contact Kate Smiley, Manager of Safety, Health & Regulatory Services, at (916) 371-2422 or smileyk@agc-ca.org.
Build Relationships to Minimize Exposure

By Mark Reynosa, Field Services Manager – Industrial Relations Northern California

As the BMW commercial suggests, “The best air bag system is the one you don’t have to use.” Similarly, the best way to deal with potential grievances is to head them off before the union gets to the point of filing a formal grievance. Perhaps the concept seems a bit optimistic, but there are some tactics that can reduce the number of grievances filed.

First and foremost, it is advisable to know your labor agreements and to work closely within the confines of each agreement to which you are signatory. Although this advice may sound overwhelming when you consider the number and length of the agreements, you should know that each agreement, in both Northern and Southern California, is structured similarly and contains similar contract language. Also, the AGC Industrial Relations departments are here to help you with contract interpretations and understanding the terms and conditions of the agreements.

Beyond working within the confines of the labor agreements, it is equally prudent to develop a working relationship with your union business partners by getting to know your local union representatives. By doing so, problems and issues that arise within the framework of the collective bargaining agreements can be resolved or be withdrawn at an earlier stage. Commonly, a local union representative will raise an issue based on a miscommunication or a perceived lack of access to information. Having a relationship and an open line of communication affords the parties an opportunity to work through the majority of issues and allows a greater possibility of coming to a resolution. Additionally, developing productive relationships with union representatives may assist you and your company with the prospect of the union working with you in regards to certain business decisions, such as scheduling (i.e. shift work), hiring, subcontracting and mobility.

When adversarial relationships exist, it takes more time to resolve issues which ultimately increases the cost of resolution. Adversarial relationships can lead to irrational behavior because actions are based on emotions instead of facts. One should consider the time it takes to resolve an issue as part of the cost of resolving the issue as “time is money”. In addition, when an issue develops into a grievance, and the grievance goes to arbitration, the employer is at risk to suffer an adverse decision by the arbitrator.

In conclusion, there are two specific things you can do to reduce the exposure created by going to a hearing to resolve a grievance: understand your rights and obligations of your labor agreements, and build constructive relationships with your local union representatives.
AGC Releases Plan to Improve Environment, Promote Greener Buildings

Plan Designed to Guide Policymakers, Educate Public and Provide Members Tool to Develop Environmental Strategy

AGC of America recently released a report designed to stimulate demand for green construction projects, boost infrastructure capacity, and improve building efficiency and green construction practices.

Titled “Building a Green Future,” the AGC plan identifies measures public officials, developers and the construction community can take to lessen the impact of the build environment on the natural environment in the U.S. Some of the plan’s recommendations and measures include doubling existing energy efficiency tax credits for commercial buildings; passing the Building Star program that invests $6 billion in improving the efficiency of commercial buildings this year; and speeding reviews and boosting local tax credits for green building products.

The plan also calls for public building projects to incorporate state of the art environmental solutions and for the federal government to make pragmatic investments in research and technology. The measures outlined in the plan focus on ways to improve the efficiency and ease of launching new transit projects, shifting cargo traffic to energy efficient barges and accelerating federal approval for new transportation projects in congested corridors. The plan also calls for meeting the level of transportation investment that is needed throughout the U.S. to improve capacity and reduce traffic.

Faster approval for new sustainable forms of power generation, including nuclear, wind and geothermal power facility, are also called for in the AGC plan. It urges contractors to recycle more building materials and cut waste while making it easier for construction firms and building owners to green their day-to-day operations.

The AGC report offers a blueprint for increasing demand, permitting and funding for green construction projects. Unlike other options currently being debated for improving America’s environmental performance, these measures harness limited government investments to leverage significant new environmental and economic opportunities,” the report states.

Safety, Green Building Top Building Division Discussion

Chair Jon Ball, Hensel Phelps Construction Co., led the Building Division meeting on May 13.

Unions Unfunded Liability: AGC of California’s CEO Tom Holsman, and Sean O’Donoghue, Director of Industrial Relations North, provided a presentation on the current state of unions and their unfunded liability. This highly informative discussion centered on historical perspective, the Pension Protection Act and certification criteria, actuarial projections, and withdrawal liability. The current economic woes have put defined benefit plans into trouble, and for most plans the value of the 2008 investment loss exceeds the value of all future benefit accruals. It is suggested that any member with questions about unfunded liability should contact their regional Industrial Relations Director for further clarification and information.

Alternative Energy: Jim Hawk, Executive Vice President, and Mike Turner, Vice President of Building, at Rosendin Electric, Inc., provided an educational presentation on cutting edge solar and wind applications. In today’s ever “greening” building market, the presentation reviewed the application process, constructability, greening aspect, financing, and the growth potential of the solar and wind markets. Numerous questions were generated from this unique presentation.

Cost of Safety: Corey Ward, Safety Compliance Officer at Clark Construction, reviewed the importance of an effective safety compliance program. His presentation focused on cost of EMR for the past five years, OSHA citations, incident rates and workers’ compensation, cost of safety relative to man-hours, statistical examples, and the long term costs.

Any questions relative to the Building Division should be directed to John Hakel.

General Session Of AGC’s Building & Jt. Engineering Divisions

Following the individual Division meetings, the Building and Jt. Engineering Divisions held a general session to discuss items of mutual interest to building and engineering contractors, as outlined below.

Updates on Water Regulation and CARB: Dan McGrew, Griffith Company, discussed how the general water permit will go into effect with the next rainy season. There will be “training for trainers” classes in the near future. He pointed out that currently a huge funding void.

Updates on Water Regulation and CARB: Dan McGrew, Griffith Company, discussed how the general water permit will go into effect with the next rainy season. There will be “training for trainers” classes in the near future. He pointed out that currently a huge funding void.

California Disabled Veteran Business Enterprise (DVBE) BUP Program Requirements: Leonard R. Dean, President, Dean Bennett Insurance & Financial Services, Inc., gave a presentation about the proposed changes to the DVBE Participation Goal Program, which would enable contractors to meet DVBE goals as a company versus simply on a project specific basis. He stated that a Business Utilization Plan (BUP) for an organization can be an option for contractors without the stress of finding a qualified DVBE at time of bid.

Legislative Update: AGC Legislative Advocate Jamie Khan provided an update on the current budget process in California and revenue projections, which were about $3 billion less than originally expected. She noted that the Legislature was moving forward to come up with a plan of action on how to deal with the growing deficit problem.
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Chair John Douglas, Granite Construction Company, led the Joint Engineering Division board of directors meeting on May 13 in Monterey.

CTC Funding Outlook for Transportation Projects: Andre Boutros, Chief Deputy Director of the California Transportation Commission (CTC), gave an overview of the Commission and its outlook for transportation projects. He noted that there is a definite gap for the state transportation need versus current funding available.

The CTC advises and assists the Administration and the Legislature in formulating and evaluating state policies and plans for California's transportation programs, and it has the ultimate responsibility for adopting statewide transportation policy. Its primary responsibilities include the programming and allocation of billions of dollars of transportation funding in partnership with regional transportation agencies and the California Department of Transportation for the construction of highway, intercity passenger rail, and transit improvements throughout California. In fiscal year 2008/09, over $7.6 billion in state and federal transportation funding was allocated by the CTC. Also in 2009, the CTC completed the programming of approximately $10.7 billion of the Proposition 1B funds and has allocated $2.6 billion of ARRA funds.

Unions Unfunded Liability: Tom Holsman and Sean O’Donoghue of AGC of California provided a briefing of possible concerns involving defined benefit plans based on current economic shortfalls. They explained how contractors trigger withdrawal liability and when contractors have to pay for it.

Caltrans (UDBE/DVBE) Goals, Commercially Useful Function (CUF) and Listing: John Douglas opened the discussion on the UDBe/DVBE issues. It was noted that there are some issues with the regulations and an ownership issue. Motion was raised, but did not pass, to have all bidders provide a listing of their UDBE/DVBE subcontractors at time of bid and eliminate the four-day period of coming up with the listing.

Cost of Safety: Corey Ward, Clark Construction, gave a presentation on the cost of safety and what may cause costs to fluctuate.

Any questions relative to the Joint Engineering Division should be directed to Director Sam Hassoun.

2010 AGC of California Spring Meeting Highlights

Members of the President’s Club are pictured during the Monterey Bay reception at the Monterey Plaza May 12.

AGC members and guests attend a reception during the AGC of California spring meetings and conference.

AGC of California President Bob Christenson welcomed Barbarette Newton of Redwood Resources into the President’s Club. Also inducted was Kevin Malloy of Trench Shoring Company, not pictured.

Tom Brickley, center, received a winning raffle ticket from President Bob Christenson and Monterey Bay District Chair Jim Campbell (right).

Pictured during a reception are, l-r, Susan Nunan, Susan Truax, Nikki Affinito and First Lady Nancy Christenson.
Top 10 Projects Awards

Following are the top 10 public project awards California last month, compliments of McGraw-Hill Construction.

<table>
<thead>
<tr>
<th>Project Title</th>
<th>Project City</th>
<th>Reported Low Bid Amount</th>
<th>Company</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lodi Energy Center - General Construction Pkg 007LEC</td>
<td>Lodi</td>
<td>$94,846,182</td>
<td>ARB Inc</td>
</tr>
<tr>
<td>Sunol Valley WTP Expansion &amp; Treated Water Reservoir WD2582</td>
<td>Sunol</td>
<td>$79,779,030</td>
<td>Shimmick Construction Co Inc,</td>
</tr>
<tr>
<td>CA/DOT Widen Freeway (12-Or1-22,405-R0.7/R2.9,20.4/22.3 12071624)</td>
<td>Garden Grove</td>
<td>$65,784,398</td>
<td>Atkinson Construction</td>
</tr>
<tr>
<td>CA/DOT Construct Hov Lanes And Direct Access Ramp 112T0404</td>
<td>San Diego</td>
<td>$50,474,442</td>
<td>Coffman Specialties Inc.</td>
</tr>
<tr>
<td>CA/DOT Bridge Seismic Retrofit 041A5214</td>
<td>Antioch</td>
<td>$38,076,343</td>
<td>California Engineering Contractors</td>
</tr>
<tr>
<td>Hyperion Treatment Plant - Digester Gas Compressor Facility SZH11307</td>
<td>Playa Del Rey</td>
<td>$24,398,779</td>
<td>USS Cal Builder</td>
</tr>
<tr>
<td>T2 West Apron and Ancillary Facilities 2012018</td>
<td>San Diego</td>
<td>$24,348,280</td>
<td>Turner/PCL/Flatiron, JV</td>
</tr>
<tr>
<td>Barstow College Performing Arts Facility 410048</td>
<td>Barstow</td>
<td>$19,474,500</td>
<td>ASR Constructors Inc</td>
</tr>
<tr>
<td>45-Bed Acute/Intermediate Care MHF 6000000271</td>
<td>Corona</td>
<td>$18,590,000</td>
<td>Soltek Pacific</td>
</tr>
<tr>
<td>Student Services / Student Union Bldg / Campus Quad 1162</td>
<td>Whittier</td>
<td>$18,312,366</td>
<td>KPRS Construction Services Inc</td>
</tr>
</tbody>
</table>

Markets at a Glance

Legal Liability for Employee Surveillance: A Continuing Issue for Employers

By James P. Watson

A recent California Supreme Court decision, Hernandez v. Hillsides, Inc., unanimously held that an employer's decision to use workplace video surveillance was not a violation of employee privacy rights, largely because of the carefully circumscribed nature of the surveillance itself. While the decision is heartening for employers with valid concerns about employee misconduct, it would be easy to overstate the license the decision gives to California employers to tape their personnel at work. The issue is of importance to contractors and other construction industry employers, because of the incidence of employee theft of valuable material and equipment, and the misuse of employer-owned computer and e-mail systems.

Hillsides, a non-profit residential facility, discovered that its computers were being used during off-hours to view pornographic materials. It decided to install video cameras in an effort to discover the identity of the personnel misusing company equipment. No employees were ever actually taped, and the system did not reveal who had misused the company's property. Nevertheless, two employees brought suit seeking damages for invasion of privacy and infliction of emotional distress.

The trial court ruled for Hillsides, finding that there was no violation because no employees were ever actually taped. In a surprising decision, the Court of Appeal reversed, and held that there could be a violation even in the absence of actual taping, because installation of the surveillance equipment, though never actually used to photograph employees, impinged upon their expectation of privacy. The Court of Appeal ruled that there was a triable issue of fact as to whether the installation constituted “highly offensive” conduct. In a unanimous reversal, the California Supreme Court overturned the Court of Appeal and found that Hillsides was entitled to judgment.

The Supreme Court noted that Hillsides had a written policy forbidding use of computer and e-mail systems in a manner that would subject Hillsides to “significant legal exposure” and cautioned the staff that there was “no reasonable expectation of privacy” for use of the systems. But the court found that this, alone, was not enough to insulate the employer’s conduct from liability. Despite the policy, the Court found that employees enjoy some limited privacy expectations in the workplace. For example, use of company-maintained bathroom and locker-room facilities could implicate privacy interests despite written non-privacy policies.

A recent Supreme Court decision, Quon v. Arch Wireless Operating Co., which will probably generate one or more new appellate decisions this year.) Second, it clearly shows that courts will look beyond employer disavowals of privacy rights in the workplace, when employees make a realistic claim of (some) privacy expectations. Finally, and of most concern, the court lays a subjective, and highly contentious, predicate for disposition of privacy claims, when such claims pass the threshold requirement of being “highly offensive” in the eyes of a jury. Employers may face an uphill battle persuading a court, on a motion for summary judgment, that a breach of privacy claim should not be entrusted to a jury’s determination. Many courts may be hesitant to rule, as a matter of law, that an employer’s surveillance activities are legally protected, unless there is clear judicial precedent for such a holding.

All of this makes it important that the employer think and plan carefully before embarking on a program of investigating its own employees.
**Save the Date!**

**Legislative Day – 2010 Coming June 23**

AGC is calling all members to join the association on Wednesday, June 23, for its annual Legislative Day in Sacramento. The day-long event promises to address the latest issues impacting the construction industry and your bottom line.

Highlights include:
- June Election analysis and outlook for November.
- Hear from top consultants who are running the campaigns.
- Meet the new Speaker of the Assembly, John Perez, the new Republican leader of the Senate, Bob Dutton, and new Assembly Republican Leader, Martin Garrick.
- Visit your Legislators in the State Capitol and be a lobbyist for the day.
- Attend a special legislative reception the night before.

For more information, visit AGC’s website at [www.agc-ca.org](http://www.agc-ca.org).

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**Calendar of Events**

**June 15**
- Trench, Shoring and Excavation - Competent Person in Oakland

**June 16**
- Aerial Lift/Fall Protection Awareness in Sacramento
- Trench, Shoring and Excavation - Competent Person in Santa Ana

**June 16-18**
- Lead Abatement - Worker 24-Hour training in Santa Ana

**June 19**
- CPR/First Aid/AED Certification Training in Anaheim
- Electrical Safety 70E Arc Flash in Los Alamitos

**June 21**
- Bay Region Golf Classic at Castlewood Country Club

**June 22-24**
- Asbestos Project Design - Initial 24-Hours in Oakland

**June 23**
- OSHA 10 - Hour Construction Safety Course in Sacramento
- Trench, Shoring and Excavation - Competent Person training in Anaheim
- On-Center On-Screen Takeoff online course

**June 24**
- Mechanics Lien Law training in San Jose
- CPR/First Aid/AED Certification Training in Anaheim

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- Local area contractor forums that focus on local issues
- An internet-based database to connect contractors for project bidding

LECET Southwest is a business development partnership between affiliates of the Laborers’ International Union of North America (LIUNA) and the community of signatory contractors throughout the states of California, Arizona, and New Mexico. For more information, please contact LECET Southwest at 916-447-1874, or visit us on the web at www.lecetsouthwest.org